

Response to Claim Rejections.

The USPTO rejected Claims 1, 2, 6 and 8 under 35 USC §103 as being unpatentable over Davy, U.S. Patent No. 3,199,756 in view of Applicant's Admitted Prior Art and Fukumoto, et. al., U.S. Patent No. 5,961,025. In addition, the USPTO rejected Claims 1, 3, 4, 7 and 9 under 35 USC § 103 as being unpatentable over Davy in view of Applicant's Admitted Prior Art and Ward, U.S. Patent No. 6,342,118. Finally, the USPTO rejected Claims 1 and 5, under 35 USC § 103 as being unpatentable over Davy in view of Applicant's Admitted Prior Art and Klingebiel, U.S. Patent No. 5,385,622. Accordingly, each rejection is based on the teaching of Davy. The applicants respectfully traverse each rejection of the claims.

The applicants have discovered a spliced continuous strip of packets used to hold bulk materials, which is prepared by a number of different processes. The processes for the preparation of these spliced continuous strips of packets require several steps including: a) forming a continuous strip of packets from packaging material and filling those packets with bulk material, wherein adjacent packets share a common sealed area of packaging material, b) forming openings in the common sealed areas between adjacent packets, c) cutting the continuous strip entirely across the common sealed area of the packets at two separate locations on the continuous strip to

form cut ends, wherein each of the cut ends of the continuous strip contains an opening in the common sealed area, and d) without using splicing tape, splicing together the two cut ends of the continuous strip with openings, such that the openings overlap.

The claims claim at least three separate processes for splicing the two cut ends together: a) ultrasonic welding, b) melting or partially melting the cut ends such as by use of an impulse feeding process, and c) use of an adhesive material. The applicants respectfully assert that these product by process claims are not disclosed by any of the cited prior art.

The USPTO accepted that the previously cited primary reference, Cullen, et. al., U.S. Patent No. 4,957,521, cannot be used as a reference against the patentability of the above-referenced invention.

Notwithstanding, the USPTO asserts that Davy, when combined with the Applicant's Admitted Prior Art along with three references, discloses the product by process claims. In response to applicants' previous arguments, the USPTO asserts that the claimed product "...appears to be the same or similar to that of the prior art...". Thus, the USPTO asserts that the burden shifts to the applicants to establish an unobvious difference between the claimed product and the prior art product. The applicants respectfully assert that the claimed

products are physically different from the products that would be produced utilizing the processes of the cited prior art, particularly Davy.

The packets that are produced by the process that is claimed in the claims of the application are distinctive from the continuous strip of packages that is taught by Davy alone or in combination with Applicant's Admitted Prior Art and the three cited references. The spliced continuous strip of packets that is claimed in Claim 1 of the application requires that the cut ends of each of the two (2) packets include a common sealed area, each of which "contains one of the openings in the common sealed area" (Claim 1, page 21, lines 13 - 14.) When the spliced continuous strip of packets is formed, the "two cut ends of the continuous strip with openings..." are spliced together "...such that the openings overlap." (Claim 1, page 21, lines 15-17.) This process is best shown in Figures 2 and 3 of the application, wherein an opening (26) in one sealed cut end is placed over an opening (26) in the sealed cut end of an adjacent packet. These two sealed cut ends, each of which contains an opening, are then spliced together "such that the openings overlap" to produce the spliced continuous strip of packets. Thus, the product produced by the process of Claim 1, contains a spliced section which contains two (2) cut ends, each of which contains an openings, wherein the openings

overlap. This structure for a joined end of two packets is different from any other common sealed area of the prior art as it has a double thickness of sealed area material containing a pair of openings lined up on top of each other i.e. "...such that the openings overlap." (Claim 1, page 21, lines 16 - 17.)

In contrast, Davy alone or in combination with the Applicants' Admitted Prior Art and the references cited fails to disclose a product with this structure. Davy teaches a package chain assembly "receiving aperture 9 flanked at its end by flat, flexible, severable webs 10-10 constituting portions of the crimped membrane C...". (Col. 3, lines 1 - 3.) Further, "[t]he corrugated tongues *f-f* forming the sealed ends of the bags together with the corrugated webs 10 - 10 define the sprocket receiving aperture 9. (Col. 3, lines 13 - 16.) As is shown in Figures 5 and 6, the opening 9 in the crimped membranes C permits the adjacent packages to swing back and forth when placed on sprocket 14. In order for this product to become the same product that is claimed, it would be necessary that the crimped membrane C be cut fully across in such a way that the opening 9 is fully contained within one of the cut end of the package 8. Further, this process would need to be done twice to produce the two common sealed areas, each containing an opening, as claimed.

This process is neither taught nor suggested by Davy. In

fact, there is no teaching of cutting fully through the crimped membrane C of Davy except through the aperture 9. A careful reading of Davy shows that when the packages of Davy are separated, the cut only occurs through the aperture 9 and the connecting web 10 - 10. The location of these connecting webs 10 - 10 is at the side edges of the aperture 9 and is not a part of the crimped end, e, of the container. In support thereof, as stated at Col. 3, lines 14 - 16, the aperture 9 is formed from "the sealed ends of the bag together with the corrugated webs 10 - 10..." Further support for the view that the connecting webs 10 - 10 form only the portion of the packet at the ends of the aperture 9 is provided at Col. 4, lines 44 - 46, where it states that membrane C is "punctured to produce the sprocket receiving aperture 9 therein and form the connecting webs 10 - 10." Further, to dispense one package at a time, Davy states that the dispensed package is separated "from its neighbor by severing the connecting webs 10 - 10...". (Col. 3, lines 35 - 38) Further support for the view that the separation of the packages is made only through the aperture 9, which is located between the connecting webs 10 - 10, is provided at Col. 3, lines 73 - 75, where it states that "the chain of packages being delivered to a cut-off mechanism F whereby the pair of webs 10 - 10 between an end package 8 and a succeeding package may be severed to free the end package."

Accordingly, the conclusion of the USPTO in the Office Action that "there is nothing in Davy to suggest the cutting would be performed through the aperture," (page 5) is inconsistent with the language of Davy. When the package is cut in Davy, it is cut through the webs 10 - 10, which form the edges of the aperture 9. There is no cutting that occurs through the ends of the bags, e, only through the aperture 9 and the connecting webs 10 - 10. This is also clear as the adjacent bags 8 are intended to hold food products, such as potato chips or popcorn, (Col. 2, line 32) whereby it would only make sense to cut through the connecting webs 10 - 10 and the opening 9. If the cut was located away from this opening 9, the product contained in package 8 would spill and be lost.

Accordingly when the package of Davy is cut through the aperture 9, it fails to form a "cut end containing an opening in the common sealed area," as is required by the claims of the application. Rather it creates a cut end through the aperture 9 with the aperture left open at one end.

Thus, it would not be obvious to cut the continuous strip of Davy entirely across the common sealed area of the package to form cut ends, wherein each of the cut ends contains one of the openings in the common sealed area. In fact, the disclosure of Davy teaches away from this result. Accordingly, the product that is claimed by the application is not produced by

the process of Davy alone.

The teachings of the Applicant's Admitted Prior Art and the three other cited references do not add to the teaching of Davy. The Applicant's Admitted Prior Art merely teaches that once a sealed section is cut, it can be rejoined to another sealed section by the use of tape. For example, if the joint formed by the cutting of 10 - 10 in Davy is cut and it was necessary to rejoin this cut section with the previously cut section, a piece of tape could be secured around 10 - 10 and an opening cut in the middle of that tape to allow the bags to swing on the sprocket 14. However, this process would not produce the product that is now claimed by the applicants whereby two cut ends, each of which contains an opening, are joined one on top of the other. Thus, neither Davy nor the Applicant's Admitted Prior Art teach the product.

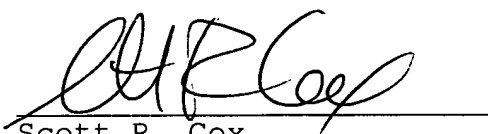
The three other references, Fukumoto, et. al., Ward, and Klingebliel, add nothing to the teachings of Davy and the Admitted Prior Art. These three references merely disclose splicing processes, none of which are the process claimed by the applicants. It is clear that none of these three references alone or in combination teach the joining of common sealed areas of two adjacent packages, wherein each of the common sealed areas contains an opening, such that there is a double thickness of this common sealed area material containing

a double opening. Thus, the applicants respectfully asserts that this product is not disclosed by any of the references alone or in combination.

CONCLUSION

The applicants respectfully assert that the invention, as disclosed and claimed, is distinctive from what is disclosed in Davy, alone or in combination with the other references. The applicants respectfully request that a Notice of Allowability be issued. If there is any questions concerning this Response, please contact applicants' counsel.

Respectfully submitted,



Scott R. Cox
Reg. No. 31,945
LYNCH, COX, GILMAN & MAHAN, P.S.C.
400 West Market Street, Suite 2200
Louisville, Kentucky 40202
(502) 589-4215

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: March 31, 2005 Nelly Hart

SRC:hh

C:\SRC\patent\p1089\P1089AResponse032805.wpd/93420/3-28-05